

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROSE MYERS

Claimant

VS.

GOODYEAR TIRE & RUBBER COMPANY

Respondent

Self-Insured

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Docket No. 247,817

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Brad E. Avery on December 17, 1999. The Order granted claimant's request for medical treatment.

ISSUES

Respondent's application for review lists as issues:

1. Did claimant suffer accidental injury arising out of and in the course of her employment?
2. Did claimant give timely notice of accident as required by K.S.A. 44-520?
3. Did the ALJ err by designating the treating physician instead of allowing respondent to provide a list of three?

Of the three issues, respondent's brief addresses only issue No. 1, accidental injury arising out of and in the course of employment, and then adds as an issue whether the ALJ erred in questioning claimant with leading questions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

The Board has limited jurisdiction when reviewing an appeal from a preliminary hearing order. The Board can only review allegations that the ALJ exceeded his/her jurisdiction. K.S.A. 1999 Supp. 44-551. This includes review of jurisdictional issues listed in K.S.A. 1999 Supp. 44-534a. That statute makes jurisdictional two of the issues respondent lists: (1) whether

claimant's injury arose out of and in the course of employment and (2) whether claimant gave timely notice. Of these two issues, respondent presents argument only on whether claimant's injury arose out of and in the course of employment. Respondent makes no argument on the timeliness of notice. The evidence shows claimant reported her August 12, 1999 injury by August 16, 1999, and at the same time went to the company dispensary and filled out a report. The Board finds claimant gave timely notice.

The Board also agrees claimant has proven she suffered an injury arising out of and in the course of her employment. Claimant, a tire builder/servicer, testified that on August 12, 1999, she was hauling bands and would look back in the direction she was going. While doing so, she felt a pull down her neck and back. Respondent has introduced evidence indicating claimant has had similar neck and back problems for a number of years and has received chiropractic treatment for those problems. But it appears from the evidence here that the condition became worse as a result of the work activities of August 12. Claimant testified the condition became worse. After the incident, the chiropractor took x-rays and suggested, apparently for the first time, claimant see a medical doctor. The Board agrees the evidence establishes injury arising out of and in the course of employment.

The remaining two issues do not challenge the ALJ's jurisdiction to act in this case. Respondent argues the ALJ should have permitted respondent to provide a list of three physicians. Respondent also argues the ALJ erred by asking leading questions to the claimant. Neither argument goes to the jurisdiction of the ALJ in general or to the specific jurisdictional issues listed in K.S.A. 44-534a. The Board will not, therefore, consider those issues at this stage of the proceedings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Brad E. Avery on December 17, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

c: Ami S. Hyten, Topeka, KS
Patrick M. Salsbury, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director